S.B. CIVIL MISC. APPEAL NO. 131/2000

Date : 07.03.2006

HON'BLE MR. BHAGWATI PRASAD, J.

Mr. Jagdish Vyas for the appellant.
Mr. N.L. Joshi for the respondents.
Mr. S.Sharma]

= = = = =

Heard.

The Tribunal has found that the driver was driving the vehicle without possessing any license. Learned counsel for the claimants relied on a case decided by this Court in the matter of Hari Narayan & Ors. Vs. Topkhana Desh Grah Nirman Samiti Ltd reported in RLW 1997(1) Raj. 660. The same law being not the valid proposition of law in view of the law laid down by the Hon'ble Supreme Court in the matter of National Insurance Co. Vs. Swarn Singh reported in ACJ (2004) 1 Page 1. In that view of the matter, the Insurance company cannot be held to be liable. Therefore, the appeal of the Insurance company is liable to be accepted. The liability will now be on the owner of the vehicle. The directions in Swarn Singh's case (supra) will govern the mode of payment. The appeal is also for enhancement of the award. Learned Tribunal while considering the case of the fracture has not dealt with the matter in detail. It has not noticed as to what bone has been fractured. From the record, it is found that it is the fracture of femur bone which has resulted into lesser movement of leg. As and when a fracture of femur takes place, many postural problems occur to the injured apart from pain which occurs periodically and occasionally. The Tribunal has awarded Rs.10,000/-

for the fracture which appears to be grossly insufficient because with the fractured femur, a man becomes psychologically weak. Every time when he has to do something strong, it will occur to him that he has a limb which is on the weaker side. The award of Rs.10,000/- for fracture of such a major bone in the facts and circumstances of the case, appears to be grossly insufficient. The same is enhanced to Rs.50,000/-. Rest of the award is maintained as it is.

The Tribunal will frame the award with the increased amount as indicated above. The liability will be that of the owner of the vehicle. The appeal is disposed of.

(BHAGWATI PRASAD, J.

bjsh